(25,485)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 655.

THE BANK OF OXFORD AND EDWARD MAYES AND ROBERT B. MAYES, PLAINTIFFS IN ERROR,

vs.

J. S. LOVE, E. F. ANDERSON, AND S. S. HARRIS, BANK EXAMINERS OF THE STATE OF MISSISSIPPI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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a In the Supreme Court of Mississippi, March Term, A. D. 1916.

Pleas and proceedings had and done at a regular term of the Supreme Court of Mississippi, begun and held at the Court Room in the Capitol on the First Monday, being the 6th day of March, A. D. 1916. Present and presiding Honorable Sydney Smith, Chief Justice, Honorable Sam C. Cook, Honorable J. Morgan Stevens, Honorable Clayton D. Potter, Honorable E. O. Sykes and Honorable J. B. Holden, Associate Justices; George C. Myers, Clerk, and C. L. Johnson, Marshal, the following proceedings were had in the case of—

No. 18051.

BANK OF OXFORD
vs.
J. S. LOVE et al.

1 In the Chancery Court. To the July Rules, 1914.

STATE OF MISSISSIPPI,
County of Hinds, First District:

To the Honorable, the Chancery Court of Hinds County, Mississippi:

The bill of complant of the Bank of Oxford, exhibited against J. S. Love and E. F. Anderson and S. S. Harris, State Bank Examiners of the State of Mississippi, complains and shows as follows, to-wit:

Your orator, the Bank of Oxford, is a corporation of the State of Mississippi, duly incorporated in and by a certain statute enacted by the legislature of the State of Mississippi, entitled, "An Act to incorporate the Bank of Oxford, at Oxford, Mississippi," which was approved March —, 1872. A copy of said statute is hereunto attached, marked Exhibit "A," and is made a part of this bill, and prayed to be taken as such.

Your orator shows that said act of the letislature, so incorporating your orator, was by the incorporators promptly accepted, that the requisite amount of its capital stock was subscribed and paid in, that said corporation was immediately duly organized, and instituted its banking business as authorized in and by its said charter, and has conducted such, its business as an operating bank, continuously from the date of such, its organization, in the month of March, 1872, until the date of filing this bill.

2 Your orator further shows that in and by such, its charter, herein pleaded, it was provided, amongst other things, that "said bank shall have the right, and exercise the privilege appertaining to a general banking, exchange and brokerage business, with all the powers of a body corporate"; also, it was further provided that, "The business of said bank shall be confided to and controlled

by its stock-holders, under such rules of law and regulations as said Company may see fit to adopt, provided the same be not in conflict with the Constitution of the United States or of this State."

Complainant now shows that on the 9th day of March, 1914, and while your orator was continuously conducting its business under its charter, as aforesaid, the legislature of the State of Mississippi passed a certain act, entitled, "An Act establishing a banking department for the State of Mississippi, creating a board of Bank Commissioners, prescribing their qualifications," etc., which said act was approved March 9, 1914. That in and by such statute, a banking department of the State was created, and charged with the execution of all laws relating to corporations and individuals doing or carrying on a banking business in the State of Mississippi. That commissioners were to be appointed, who, in their turn, should name three bank examiners; that amongst the powers and duties of such bank examiners it was provided, by Section 10 of such act, that it should be the duty of the bank examiners to examine banks organized under the laws of the State, under the provisions of such act, twice
3 a year, and oftener, if necessary, at irregular intervals, and without prior notice; and amongst other things, by Section 11 it was provided that at such examinations the examiners should have the power and duty to examine the cash, bills, collateral, and securities, books of account, the condition and affairs of the bank, the mode of conducting and managing the affairs of the bank, the actions of its directors, and the investment of the funds of the bank; also, it was provided by Section 21 that if any bank examiner, from any examination of any report rendered under such statute should be of the opinion that any bank is insolvent, or that its condition is such that a further continuance of its business is hazardous to its creditors, depositors, or the publick, or that the bank has failed to comply with any of the rules, conditions or restrictions provided by law, he should forthwith call a meeting of the Board of Bank Examiners, and report the facts to such meeting; and by Section 22 it was provided that if the Board of Bank Examiners find that any bank is attempting to do business with less than the minimum capital required by law, or without having its full capital paid in, or that any bank is insolvent, or that any bank has, for any reason failed, or if the holders of two-thirds of the stock of any bank shall vote to liquidate or dissolve it, that it shall be the duty of the Board of Bank Examiners forthwith to liquidate the same, as provided in such statute. And, also, that such Board of Bank Examiners must proceed to liquidate the bank if it has made
4 a payment of dividends contrary to law, or made any charges against the surplus account contrary to law, or suffered its capital to remain impaired after a thirty days' notice, or allowed its reserve fund to remain below the minimum after thirty days' notice, or has persistently allowed its reserve fund to remain below the minimum amount; or for persistent violation of any other provisions of law, etc.

The said statute contains many other provisions unnecessary to set forth here, in and by which the terms of the charter of your

orator are violated, if the said statute be applied to your orator, insofar as that said charter expressly provides that, "the business of said bank shall be confided to and controlled by its stockholders, under such rules of laws and regulations as the said Company may see fit to adopt, provided the same be not in conflict with the Constitution of the United States, or of this State."

Your orator now shows that its charter aforesaid, by which the conduct of its affairs is committed to its own stock-holders, was accepted in the year 1872, organized under, and continued under, until this date, constitutes a contract protected by the guarantee clauses of the Constitution of the United States, Article 1, Section 10, which forbids any state to make any law impairing the obligation of contracts. The state legislature has no power to subject the affairs of said bank to the inspection, the examination, the decision, the control of said Board of Examiners, nor to give the Board of Examiners any power in connection with or over the management of the
5 bank's affairs, or to order or superintend any liquidation thereof. The charter provides, expressly, that the limitation in respect to these matters of administration and supervision, and control of the stock-holders, is to be controlled only by the provisions of the Constitution of the United States, and the Constitution of the State of Mississippi; and the legislature of the State is plainly excluded from any authority over the same.

Your orator now shows that the said bank examiners are threatening to interfere with the affairs of this bank, and to exercise such powers as are provided for by said statute over this bank, and are threatening to make such examinations and reports upon and about, and to exercise all the other authorities and powers provided for by such statute, over the affairs of your orator, said bank and your orator pleads hereby, and invokes for such, its contract, immunity from such supervision and control, the said contract clause of the Constitution of the United States, and claims its right exclusively to control and manage the affairs of its own bank.

Your orator further shows that in and by Section 23 of the said banking law, being the Act of March 9, 1914, a special assessment of tax is provided for, for each year, of one-fortieth of one per cent of each bank's total assets, and the money accruing from such assessment to be used for maintenance of the banking department.
6 Your orator shows that, proceeding under the provisions of Section 24, the said bank examiners prepared a statement, and demanded of this bank the payment of such assessment within ten days after the receipt of such notice, the assessment so demanded from your orator by said examiners being — Dollars. And the said statute provides that any bank failing to make payment within ten days should be liable to pay damages to the extent of ten per cent. per annum of its assessment for each day's delay.

Your orator protests and shows that it was not subject to the provisions of said banking law, and by its said contract charter, the whole scheme, so devised, as applied to your orator bank was unconstitutional and void; and your orator shows that for such reason it was not subject to assessment devised and contrived only

for the purpose of maintaining such bank department; and your orator was protected against the payment of such assessment, also, by the said contract clause of the Constitution of the United States.

Your orator paid the assessment because of the penal clause contained in such statute; but paid the same under protest, with notification of such protest at the time of such payment to the said bank examiners.

Premises considered, your orator prays that the bank examiners be made parties defendant to this bill, and be required to answer the same, though not under oath, their answer hereto being expressly waived; and that on final hearing this Hon-
7 orable Court will issue the State's writ of injunction perpetually restraining and enjoining the said bank examiners, and their successors in office, from examining, or in any way undertaking to enforce, as against your orator bank, any of the provisions whatsoever of the said banking law of March 9, 1914; and decreeing that your orator bank, under and by virtue of its said charter, is exempt from the entire scheme by such law devised, of bank supervision; also, that this Court shall decree that the said bank examiners shall repay to your orator the said sum of money so demanded from your orator by them, and received by them under protest, as aforesaid, as such assessment; and for such other, further and general relief as to this Court shall seem meet and proper.

And your orator, as in duty bound, will ever pray.

MAYES & MAYES,
Solicitors for Complainant.

8 EXHIBIT "A."

An Act to Incorporate the Bank of Oxford, at Oxford, Mississippi.

Section I. Be it enacted by the Legislature of the State of Mississippi, that W. L. Archibald, Chas. B. Howry, Wm. A. West, A. Y. Owens and Silas Owens, Jr., and their associates, be and they are hereby created a body politic and corporate under the name and style of the Bank of Oxford; and by that name may sue and be sued, plead and be impleaded in any Court of law or equity, in this state or elsewhere, may have a common seal, the same to break or alter at pleasure and shall have perpetual succession. Said Bank shall have the right and exercise the privilege appertaining to a general banking, exchange and brokerage business, with all the power of a body corporate.

Section II. Be it further enacted, that the Capital Stock of said Bank shall be one hundred thousand dollars, divided into shares of one hundred dollars each, and whenever the sum of thirty-three thousand, three hundred and thirty-three 33/100 dollars is subscribed and paid into the Capital Stock the Bank may commence business.

Section III. Be it further enacted, that said Banking Company

shall and they are hereby authorized to invest their capital in gold and silver coin, builion, bank notes, bonds, mortgages, bill of exchange, foreign and domestic securities, or other evidences of debt; may buy, sell, lease or rent real estate at their pleasure.

Section IV. Be it further enacted, that the business of said Bank shall be confided and controlled by its stockholders under such rules of laws and regulations as said Company may see fit to adopt,

Provided; the same be not in conflict with the Constitution
9 of the United States or of this State.

Section V. Be it further enacted, That the Cashier of said Bank, whether an interested party or not, be and he is hereby declared to be a competent witness in all controversies, or matters growing out of, or appertaining to the business of said Bank, with all persons or their representatives outside of the stockholders thereof.

Section VI. Be it further enacted, That said Bank shall be authorized to receive on deposit any sum of money, or other valuable thing, and to pay and receive such rates of interest as may be mutually agreed upon by said Bank with its depositors, customers and borrowers.

Section VII. Be it further enacted, That upon the withdrawal of any stockholders, or stockholder from said Banking Company the liability of such withdrawing stockholders shall cease from the date of such withdrawal, as against all contracts thereafter made by said Bank.

Section VIII. Be it further enacted, That the by-laws, rules and regulations of this Corporation which said Company may make under the Fourth Section of this Act shall be made and adopted by a majority vote of these stockholders, according to the shares held by them, and that this Act shall take effect and be in force from and after its passage.

Approved March 1872.

10 OFFICE OF SECRETARY OF STATE,
JACKSON, Mississippi.

I, James Lynch, Secretary of State, do certify that the above is a true and correct copy of the original on file in this office.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Mississippi, this the 27th day of March, A. D. 1872.

JAMES LYNCH,
Secretary of State.

Filed May 14, 1914. W. W. Downing, Clerk.

11 *Chancery Summons.*

The State of Mississippi to the Sheriff of Hinds County, Greeting:

We command you hereby that you summon J. S. Love, E. F. Anderson and S. S. Harris (State Bank Examiners of Mississippi), de-

fendants, if to be found in your county, so that they be before the Chancery Court at Rules to be holden in and for the County of Hinds, First District, at the courtroom thereof, in the City of Jackson, on the 2nd Monday of September, 1914, to answer a bill of complaint exhibited against them by Bank of Oxford, Complainaint in our said Court; and further, to do and receive what our said Court shall have considered in this behalf.

And have then and there this summons.

Witness, W. W. Downing, Clerk of the said Court by his signature and also the seal of said Court, affixed at office in Jackson, Mississippi.

Issued the 17th day of July, 1914.

[SEAL.] W. W. DOWNING, *Clerk.*

Executed personally on the State Bank Examiners of Mississippi composed of J. L. Love, E. F. Anderson and S. S. Harris, by delivering a true copy of the within writ to R. L. Hall, Secretary of State Bank Examiners.

This 17th day of July, 1914.

E. S. MIDDLETON, *Sheriff.*
By W. A. BANDEL,
Deputy Sheriff.

12 *Chancery Summons.*

The State of Mississippi to the Sheriff of Hinds County, Greeting:

We command you hereby, that you summon J. S. Love, E. F. Anderson, S. S. Harris, (State Bank Examiners of Mississippi) Defendants, if to be found in your County, so that they be before the Chancery Court at Rules to be holden in and for the County of Hinds, First District, at the courtroom thereof, in the City of Jackson, on the 2nd Monday of July 1914, to answer a bill of complaint exhibited against them by Bank of Oxford Complainant in our said Court; and further, to do and receive what our said Court shall have considered in this behalf.

And have then and there this summons.

Witness W. W. Downing, Clerk of the said Court, by his signature and also the seal of said Court, affixed at office in Jackson, Mississippi.

Issued the 14th day of May, 1914.

[SEAL.] W. W. DOWNING, *Clerk.*

13 In the Chancery Court of Hinds County, First District, January Term, 1915.

BANK OF OXFORD
v.
J. S. LOVE, E. F. ANDERSON and S. S. HARRIS.

Demurrer of the Defendants to the Bill of Complaint.

And now come the defendants, J. S. Love, E. F. Anderson and S. S. Harris, Bank Examiners of the State of Mississippi, and demur to the bill of complaint filed against them by the Bank of Oxford and say that the same is insufficient in law, and assign the following grounds of demurrer, to-wit:

1st. The bill contains no equity;

2d. The bill and exhibits do not show a charter of contract right exempting complainants from the provisions of the State banking act referred to in said bill;

3d. The plaintiff has no charter contract with the State that is not subject to repeal, amendment or change;

4th. The plaintiff is entitled to no relief under the bill.

Wherefore, the defendants pray the judgment of the Court as to whether they should make further answer to said bill.

J. S. LOVE,
E. F. ANDERSON AND
S. S. HARRIS.
By GEO. H. ETHRIDGE.
Assistant Attorney General.

STATE OF MISSISSIPPI,
Hinds County:

I, George H. Ethridge, Asst. Attorney General, attorney
14 for the defendants in the above styled cause, certify, that, in my opinion, the foregoing demurrer is well settled in law and should be sustained.

GEO. H. ETHRIDGE,
Assistant Attorney General.

GHE: H.

Filed in my office this the 12th day of September, 1914.

W. W. DOWNING, *Clerk.*

15 In the Chancery Court of Hinds County, First District, January Term, 1915.

BANK OF OXFORD
v.
J. S. LOVE et al., Bank Examiners.

Final Decree.

This cause coming on for hearing before the Chancellor on demurrer of the defendants to the bill of complaint filed by the complainant, and the Court having heard and fully understood the same, doth sustain said demurrer and dismiss the bill of complaint, from which judgment the complainant prayed an appeal to the Supreme Court which is hereby ordered and allowed.

O. B. TAYLOR, *Chancellor.*

BANK OF OXFORD
v.
16 J. S. LOVE, et al.

Opinion of Chancellor.

The complainant in this case holds a charter granted to it by the State Legislature before the adoption of the Constitution of 1890, the charter having been granted and it having begun business in the year 1872. Among the provisions of the charter is the following:

Section IV. "Be it further enacted, That the business of said bank shall be confided and controlled by its stockholders under such rules of law and regulations as said company may see fit to adopt. Provided the same be not in conflict with the Constitution of the United States, or of this State."

It contends that by and through its special charter, and especially the section quoted, that it is not subject to the provisions of Chapter 124 of the Acts of 1914, establishing a banking department for the State, and providing for its organization and conduct and the supervision by said department over State banks; that the attempt to bring it under the provisions of this act is violative of its
17 charter rights and in conflict with the clause relating to the impairment of contracts found in both the Constitution of the United States and of this State.

The respondent demurred to the bill of complaint and contends that the Legislature in the section of complainant's charter referred to only said in so many words that in so far as this bank was concerned its business should be "confided and controlled by its stockholders" instead of by its board of directors, or other officers, or other persons, who might have been named had the legislature so desired; that is to say, that the legislature simply meant to give the

control of this bank's business to a certain named class of persons interested in it, without any idea at all that this particular class should exercise this control outside of all lawful restraint or legal regulations that might be imposed in the future.

There is, indeed, strong argument to support this position. To hold otherwise would be for us to assume the ridiculous position that our state legislature here deliberately formed and created an organization, and set it apart, outside others of its class, with a perpetual existence, to conduct its business outside the law; an organization which, for illustration, could charge and collect usury regardless of usury laws, with no power of examination by the State to see
18 if it were so doing; one which could refuse absolutely to make all reports required of it by law for the information and protection of the public and parties doing business with it, and yet escape all pains and penalties fixed for such conduct. Indeed, it would mean, that it matters not how insolvent it might become, nor how much the rights of its creditors might be endangered, yet the strong arm of the Law, through its Chancery Courts, could not reach out and administer its affairs for the benefit of all because, forsooth, its business is to be confided and entrusted to its stockholders. We cannot believe that the legislature here intended to create an artificial being, and send it out into the world with the right to perpetual existence, possessed with privileges, powers and immunities not possessed by others of its class and absolutely outside of all governmental regulation and control. It would be shocking to think of such powers and privileges being granted to a natural person, subject to the frailty of mortality, but when conferred upon an artificial person, with perpetual life, with the right to go unrestrained through countless thousands of future years, under all the changing conditions of age after age, is indeed revolting. We believe that the legislature only meant to designate a particular class, as opposed to any other class, who should have and possess the powers of regulating the policy subject to proper governmental regulation and supervision.

But even admitting that the section means just what complainant says it means, it is contended that it was without the power of the legislature to confer such powers, and that therefore the grant is void. In other words respondent contends that the banking
19 business is always subject to the inherent police power of the State, and that no legislature can bargain this power away.

Without attempting any elaborate discussion of the police power, and without going into refinements in regard to this matter, the weight of recent and present-day decision makes the police power co-extensive with all the great public needs. The Supreme Court of the United States not only adheres to this principle, but it has specifically decided that the regulation of banks is within this police power. In upholding the bank depositors gu-ranty law of the State of Oklahoma in Noble State Bank v. C. N. Haskell et al., 219 U. S. 104, Justice Holmes says:

"It may be said in a general way that the police power extends to all the great public needs. Camfield v. United States, 167 U. S. 518. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality of strong and preponderant opinion

to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerece. One of these conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If then the legislature of the State thinks that the public welfare requires the measure under consideration analogy and principle are in favor of the power to enact it. * * * The power to compel, beforehand, co-operation, and thus, it is believed to make a failure unlikely and a gen-ral panic almost impossible, must be recognized, if government is to do its proper work." Also line of authorities cited in this opinion, and to the same effect are Shallenburger v. First State Bank of Halstein, 219 U. S. 114; Assaris State Bank of Assaria v. Joseph N. Dalley, 55 U. S. (Law Ed.) 123; Morris Engel v. Edward R. O'Malley 55 U. S. (Law ed.) 128 and note.

Section 190 of our State Constitution provides "The exercise of the police power of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe upon the rights of individuals or general well being of the state." The State Legislature has determined that the supervision of banks in accordance with the Act of 1914 is for the well being of the State, and with the decision of the United States Supreme Court, together with the rule of construction furnished by our constitution we are compelled to hold that this subject is properly embraced within such police powers. Our own Court in Alcorn v. Hamer, 38 Miss. 652, and in Montross v. State, 61 Miss. 429, has specifically decided that the police power cannot be delegated by the Legislature, and it is therefore necessary to hold that it was without the power of the legislature to delegate to complainant the powers it claims under its charter.

Again we desire to call attention to the fact that there is a difference between powers secured by contract and what are termed mere emoluments of existence. To illustrate a grant of power to charge a certain rate of interest would be a power secured by contract in contra-distinction to a mere emolument of existence. To what class would be referred the section of complainant's charter. We think clearly to the latter, and it is universal-y conceded that this class is always subject to control and modification by the legislature. 8 Federal Annotated Statutes 790. This distinction is made cl-ar in the decisions in regard to the law creating the Railroad Commission. The Railroad Commission is a department of the State Government very similar in the scope of its jurisdiction to the present banking department. The Supreme Court of the United States has universally upheld the constitutionality of this act. John M. Stone, et al. v. Farme-s Loan and Warehouse Co., 29 U. S. (Law Ed.) 636, and several other kindred cases. Also for a construction of charter by our own Court see Stone v. N. J. & C. R. R. Co., 62 Miss. 652. Railroad Commission v. Railroad, 78 Miss. 750.

In this connection it is at least interesting to note what is at least

dicta in the John M. Stone, et al., case above referred to in
22 29 U. S. (Law Ed.) 636. There the Warehouse Company had a charter granting the directors powers coupled with a condition that their exercise must be in accordance with the laws of the state. The Court says: "This undoubtedly means with such laws as may be constitutionally enacted." Not simply and alone the laws then in force and operation, but any future laws that might be enacted after the granting of the charter. In the present case the complainant is granted a charter and certain powers coupled with a condition that the same must not conflict with the constitution of the state. If the Warehouse Company above was subject to future laws, is it not equally as true that the Complainant is subject to not only the constitution of 1890? There is strong reason for this argument.

For the reasons stated the demurrer will therefore be sustained.

Filed Jan. 16, 1915. W. W. Downing.

23 STATE OF MISSISSIPPI,
County of Hinds, First District:

In the Chancery Court, to the January Term, 1915.

THE BANK OF OXFORD
v.
J. S. LOVE et al., Bank Examiners.

Know all men by these presents, that we, the Bank of Oxford, as principal, and Edward Mayes and R. B. Mayes as sureties, acknowledge to owe to J. S. Love and E. F. Anderson and S. S. Harris, State Bank Examiners of the State of Mississippi, the sum of Five Hundred Dollars, for the payment of which, well and truly to be made, we do hereby pledge ourselves, our successors, heirs, executors and administrators, firmly by these presents.

Witness our signatures, this the 28th day of January, 1915.

The condition of the foregoing obligation is such that, whereas, at the January term, 1915, of the Chancery Court aforesaid, in the above entitled cause, decree was rendered sustaining a demurrer to the bill of complaint filed therein by the said Bank of Oxford, and dismissing the bill, and with which said decree the Bank of Oxford is dissatisfied, and has taken an appeal to the Supreme Court of the State of Mississippi.

Now, therefore, if the said Bank of Oxford shall pay all the costs of such appeal, in case the decree aforesaid be affirmed, then the foregoing obligation shall be null and void. Otherwise, to remain in full force and effect.

THE BANK OF OXFORD,
By EDWARD MAYES, *Att'y.*
EDWARD MAYES.
ROBT. B. MAYES.

Approved Feb. 2, 1915,
W. W. DOWNING,
Clerk of Chancery Court of Hinds County, Mississippi.

23½ STATE OF MISSISSIPPI,
County of Hinds, First District:

In the Chancery Court of Hinds County.

I, W. W. Downing, Chancery Clerk of Hinds County, Mississippi, hereby certify that the foregoing 19 pages contain a full true and correct transcript of the records filed in my office in the above entitled cause.

Witness my hand and seal this 30th day of January, A. D., 1915.

[SEAL.] W. W. DOWNING, *Clerk.*

24 STATE OF MISSISSIPPI,
County of Hinds, First District:

In the Supreme Court, to the March Term, 1916.

No. 18,051.

BANK OF OXFORD, Appellant,
v.
J. S. LOVE et al., Appellees.

Assignment of Errors.

Comes the appellant herein, and for error assigns as follows:

1. The Court below erred in sustaining the demurrer to the original bill herein, and dismissing said bill.

2. The Court below erred in not overruling the demurrer to the original bill herein, and in not requiring the defendant to answer the same.

Respectfully submitted,

MAYES & MAYES,
Attorneys for Appellant.

We hereby certify that we have this day delivered copy of the foregoing assignment of errors to opposing counsel, Hon. Ross Collins, Attorney-General, Jackson, Miss. April 18, 1916.

MAYES & MAYES.

25 *Judgment of Court.*

MONDAY, June 19th, 1916.

18051.

BANK OF OXFORD
vs.
J. S. LOVE et al.

This cause having been submitted on a former day of this term on the record herein from the Chancery Court of Hinds County,

First District, and the Court having sufficiently examined and considered the same and being of opinion that there is no error therein doth order adjudge and decree that the decree of said Chancery Court rendered in this cause on the 16th day of January A. D. 1916 be and the same is hereby affirmed, and that the appellee do have and recover of appellant and Edward Mayes and Robert B. Mayes sureties in the appeal bond the costs of this cause in this Court and in the Court below to be taxed &c.

26 BANK OF OXFORD
v.
J. S. LOVE et al.

Division A—Holden, J.

The appellant Bank of Oxford filed its bill in the Chancery court of Lafayette county, seeking to enjoin the State Bank Examiners, J. S. Love et al., appellees, from interfering, under the State Banking Law enacted in 1914, with its stockholders and directors in the administration of its internal affairs, and to recover the money paid by it under protest under the State Banking Law for the support of the said bank examiners. From a decree denying the relief sought by the Bank of Oxford, it appeals here.

Briefly stated, the allegations of the bill are that the Bank of Oxford was organized under and incorporated by a special Act of the Mississippi Legislature approved in March, 1872; that said incorporating Act was promptly accepted by appellant, the requisite amount of capital stock paid in, and that the corporation duly organized and commenced its banking business under such charter, and has conducted its business as such continuously from the date of its organization up to the date of the filing of this bill; that in and by said charter, it was provided, amongst other things, that the bank shall have the right and exercise the privileges appertaining to a general banking, exchange and brokerage business, with all the powers of a body corporate; that Section 4 of said bank charter provides:

"that the business of said Bank shall be confided to and controlled by its stockholders under such rules of laws and regulations as said Company may see fit to adopt, provided that the same be not in conflict with the Constitution of the United States or of this State."

The bill then sets forth the enactment by the Mississippi Legislature on the 9th day of March, 1914, of the Act establish-
27 ing a Banking Department, and that by Section 10 of such Act it is provided that the Bank Examiners thereby created should examine twice a year, and oftener if necessary, at irregular intervals and without prior notice, the banks organized under the laws of the State; that Section 11 of said Act provides that at such examinations, the examiners should have the power and duty to examine the cash, bills, collateral, securities, books of account, the con-

dition of affairs at the bank, the mode of conducting and managing the affairs of the bank, the actions of its directors, and the investment of the funds of the bank; that Section 21 of said Act provides that if any bank examiner should from any such examination be of opinion that any bank is insolvent or that its condition is such that a further continuance of its business is hazardous to its creditors, depositors, or the public, or that the bank has failed to comply with any rules or instructions provided by law, he should forthwith call a meeting of the Board of Examiners and report the facts to such meeting; that Section 20 of said Act provides that if the said Board should find any bank is attempting to do business with less than the minimum capital required by law, or without having its full capital stock paid in, or that any bank is insolvent, or that any bank has for any reason failed, it shall be the duty of the Board of Examiners forthwith to liquidate the said bank as provided in such statute; that such Board should proceed to liquidate the business if the bank has made a payment of dividends contrary to law, or made any charges against the surplus account contrary to law, or suffered its capital to remain impaired after a thirty-days' notice, or allowed its reserve fund to remain below the minimum after thirty days' notice, or for persistent violation of any other provisions of the law.

28 The bill then sets up the guaranty clause of the United States Constitution (Article 1, Section 10) and alleges that because of such charter and such constitutional provision the state Legislature had no power to subject the affairs of the appellant bank to the inspection, examination, decision and control of said Board of Examiners, or to give the Board of Examiners any power in connection with or over the management of the bank's affairs, or to order or superintend any liquidation thereof.

The bill then sets forth that the Bank Examiners, J. S. Love et al., appellees, were threatening to interfere with the affairs of said bank and to exercise the power provided for by said Act of the state Legislature, applying the same to said bank; and it invoked its immunity and exemption from such supervision and control under said contract clause of the Constitution of the United States. The prayer of the bill asks for an injunction against the Bank Examiners from interfering with its affairs, and also for a return of the tax so paid by it under such protest.

To this bill the appellee Bank Examiners, J. S. Love, et al., demurred; which demurrer was sustained by the chancellor and the bill dismissed.

The question presented to us here for decision is whether or not the Bank of Oxford, holding a legislative charter of date March —, 1872, which provides, "that the business of said Bank shall be confided to and controlled by its stockholders under such rules of laws and regulations as said Company may see fit to adopt, provided that the same be not in conflict with the Constitution of the United States or of this State," is exempt from the operation of the State Banking Law enacted by the Legislature in 1914; in other words,

29 whether or not said bank, by its charter, is immune from the supervision and regulation provided for by the said Act of

1914. It will be observed that the appellant bank does not content that the supervision and regulation of state banks imposed by said Act of 1914 is unreasonable, but appellant's contention here is based solely upon the ground that the Act of the Legislature of 1914, is not to be applied to it, as this would be an impairment of its charter rights of contract with the State, and, therefore, violative of its constitutional right of contract under the guaranty clause of the Federal Constitution, Article 1, Section 10; that on account of the contract with the State as evidenced by its charter granted in 1872, the Legislature now has now power to subject the affairs of the bank to the rules and regulations as provided in the said Banking Law of 1914.

It is not clear to us that the operation of the State Banking Act of 1914 conflicts with or interferes with the substantial rights of the appellant bank under its charter. The law undertakes to reasonably supervise and regulate the affairs of the bank with reference to its solvency and safety as to the public use and public welfare; but we will concede, for the purposes of the discussion, that the Act of 1914 contravenes and interferes with the charter rights of the appellant bank, as granted to it by the Legislature in 1872, in the management of its internal affairs. This raises the question of whether or not such rights of exemption, as claimed by the appellant bank under its charter, could be lawfully granted to it by an Act of the Legislature of 1872. In other words, did the Legislature have the power and authority to grant to the appellant bank, through its charter, immunity and exemption from any reasonable regulations that might thereafter be imposed by the State under its inherent police power? We think not. It is contended by counsel for appellant that this kind of legislative contract can not be restricted or controlled by the police power of the State, but that the police power extends only to matters affecting the public health or the public morals; but we think the authorities have settled the law contrary to the contention of counsel for appellant.

"The police power in its broadest acceptation means the general power of a government to preserve and promote the public welfare by prohibiting all things hurtful to the comfort, safety, and welfare of society, and establishing such rules and regulations for the conduct of all persons and the use and management of all property as may be conducive to the public interest."—22 Am. & Eng. Enc. Law 916.

"The police power is a governmental function, and neither the state legislature nor any inferior legislative body to which a portion of such power has been granted can alienate, surrender, or abridge the right to exercise such power by any grant, contract, or delegation whatsoever."—22 Am. & Eng. Enc. Law 921.

"The nature of the business done by banks in dealing with money, receiving deposits for safe keping, discounting paper, and loaning money is such and is so affected with the public interest as to justify reasonable regulation for the protection of the people. The confidential and trust relations which exist between the bank and its

patrons, and the difficulty which depositors and those dealing with the bank necessarily encounter in detecting irregular practices and in ascertaining the real financial condition of banks, are sufficient to justify police control and inspection."—22 Am. & Eng. Enc. Law 933.

It seems to be settled by the United States Supreme Court that the banking business is affected with a public use, and that it is within the power of the legislature to enact laws under their police power regulating the banking business. Noble State Bank v. Haskell, 219 U. S. 104, 55 Law ed. 112; Shallenberger et al. v. First State Bank of Holstein, 219 U. S. 114, 55 Law ed. 117. The rights and powers granted to the appellant bank in its charter from the Legislature in 1872 are only such powers as might be exercised by an individual, subject to the regulation and control of the Legislature; and the Legislature had no authority to surrender this power of control and regulation in the interest of the public welfare.

"No legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police."—Stone v. State of Mississippi, 101 U. S. 814, 25 Law ed. 1079. (Head note.)

"The police power of a state extends to the regulation of the banking business, and even to its prohibition except on such conditions as the state may prescribe."—Noble State Bank v. Haskell, supra. (Head note.)

Thus, in paragraph 3 of the head notes of the last above-cited case, it was held that the enactment of the banking law, similar to the one in Mississippi, was within the police power of the state, and did not infringe the obligations of a charter contract. On
32 page 111 of the regular edition, page 116 of the 55 Law ed., the court, in speaking of the police power, said:

"It may be said in a general way that the police power extends to all the great public needs. Camfield v. United States, 167 U. S. 518, 42 L. ed. 260, 17 Sup. Ct. Rep. 864. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably a few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currence in daily business. If then, the legislature of the state thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it."

The same conclusion was reached in Shallenberger et al. v. First State Bank, supra, involving the constitutionality of a Nebraska statute; and the constitutionality of the law was upheld also in the case of Assaria State Bank v. Dolley, 219 U. S. 121, 55 L. ed. 123. In the case of Boston Beer Company v. Commonwealth of Massachusetts, 97 U. S. 25, 24 L. ed. 989, the court, in discussing charter rights and the contract clause of the Federal Constitution, says:

"Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no
33 doubt that it does extend to the protection of the lives, health and property of the citizens, and to the preservation of good order and the public morals. The Legislature, cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the Maxim, salus populi suprema lex; and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself. Boyd v. Alabama (ante, 302."

In the case of Stone et al. Railroad Comissioners, v. Y. & M. V. R. Co., 62 Miss. 607, it is said in the third paragraph of the head notes:

"A grant to a railroad company, in general terms, of authority to affix its rates of compensation is not a renunciation of legislative power to secure reasonable rates. Every presumption is against such renunciation. But where it is clear that the legislature intended to partially renounce such control by conferring upon the company the right to fix its rates within limits, the fixing of such limits, in the charter, is a specification of what will be a reasonable exercise of the authority conferred, and is to that extent a renunciation of the State's control."

Therefore, following the sound and safe conclusions reached in the foregoing authorities, we find the law to be that the police power of the state extends to the regulation of the banking business
34 and it cannot be surrendered by the legislature; and we hold that the appellant Bank of Oxford, conducting a banking business, is affected with a public use; that the Act of 1914, reasonably regulating the conduct and affairs of banks, is within the police power of the state, and is valid; and that the rights and powers granted to the appellant bank by the Legislature of 1872 are null and void, in so far as they conflict with the operation of the banking law of 1914—for the reason that the legislature had no authority to renounce the State's control over the conduct and business of the appellant bank, under its police power.

The Banking Act of 1914 was designed and enacted primarily for the purpose of regulating the affairs and duties of the banks towards the public, and to prevent injury and losses on account of negligence or fraud. The banking business is one in which the public may be easily injured and defrauded, and a law for the supervision and regulation of the business by the State is a wholesome piece of legislation. The Act of 1914 imposes reasonable regulations, and only such constraints as make for sound banking business and a protection of the public welfare.

In view of these conclusions, we are clearly of the opinion that the judgment of the lower court should be

Affirmed.

35 UNITED STATES OF AMERICA,
State of Mississippi:

THE BANK OF OXFORD, Appellant,
v.
J. S. LOVE et al., Appellees.

Petition for Writ of Error.

To the Honorable Sydney Smith, Chief Justice of the Supreme Court of the State of Mississippi:

The petition of the Bank of Oxford, and of Edward Mayes and Robt. B. Mayes, respectfully shows that on the 19th day of June, 1916, the said Supreme Court of the State of Mississippi rendered judgment against the petitioners in a certain case wherein your petitioner, the Bank of Oxford, was appellant, and the other petitioners were its sureties on its appeal bond, and wherein J. S. Love, E. F. Anderson and S. S. Harris, State Bank Examiners, were appellees, and affirming a decree of the trial Court, to-wit, in the Chancery Court of Hinds County, Mississippi, which decree was, in effect, adverse to the petitioner, the Bank of Oxford, and for costs, and in legal effect awarded execution thereon, as will appear by reference to the record and proceedings in this case; and whereas, in said suit was drawn in question the validity of certain statutes of the State of Mississippi, on the ground of their being repugnant to the Constitution of the United States, and the decision of the said Supreme Court of Mississippi was in favor of the validty of such statute; and that in said suit was drawn in question the validity of an authority exercised by the said State Bank Examiners of said State, under the laws of said State, on the ground that such authority,
so exercised over the said Bank of Oxford, was repugnant to
36 the contract clause of the Constitution of the United States,
and the Amendments to such Constitution, and the decision of said Supreme Court was in favor of the validity of such authority;

And the decision of said Supreme Court of the State of Mississippi was final, and the said Supreme Court is the Court's highest resort in said State:

Wherefore, your petitioners are aggrieved, and they pray for a writ of error, with citation thereon, returnable to the Supreme Court of the United States.

And as in duty bound, they will ever pray.

BANK OF OXFORD,
EDWARD MAYES,
ROBERT B. MAYES,
By EDWARD MAYES,
Their Attorney.

STATE OF MISSISSIPPI:

Desiring to give petitioners an opportunity to test in the Supreme Court of the United States the questions presented in the foregoing petition, and in the assignment of errors by which it is accompanied,

it is ordered that a writ of error be, and the same is hereby allowed to the said Court, and that the same be issued upon the execution of a bond in the penal sum of One Thousand Dollars ($1,000.00), which is herewith presented, and which is hereby approved.

In testimony whereof, witness my hand this the 21st day of August, 1916.

SYDNEY SMITH,
Chief J. Supreme Court.

37 *Appeal Bond.*

Know all men by these presents, That the Bank of Oxford, and Edward Mayes and R. B. Mayes, as principals, and James Stone and W. E. Stone, as sureties, acknowledge to owe to J. S. Love and E. F. Anderson and S. S. Harris, State Bank Examiners for the State of Mississippi, and their successors in office, the sum of One Thousand Dollars ($1,000.00), for the payment of which, well and truly to be made, we bind ourselves, our heirs, our successors, executors and administrators, jointly and severally, firmly by these presents.

Witness our signatures, this the 21st day of August, 1916.

The condition of the foregoing obligation is such that, whereas, lately at the Supreme Court of the State of Mississippi, in a suit pending in said Court between the said Bank of Oxford, as appellant, and the said Love and Anderson and Harris, State Bank Examiners, as appellees, a judgment was recovered against the said Bank of Oxford, as principal, and Edward Mayes and R. B. Mayes, as sureties, and a certain judgment rendered by the Chancery Court of Hinds County, Mississippi, First District, against the Bank of Oxford, dismissing its bill of complaint against the said State Bank Examiners, was affirmed; and, whereas, the said Bank of Oxford and others have obtained a writ of error, and filed a copy thereof, in the Clerk's office of said Court, to reverse the judgment in the aforesaid suit, rendered by the Supreme Court of Mississippi, and a citation directed to the said J. S. Love, and E. F. Anderson, and S. S. Harris, State Bank Examiners, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof,

Now, therefore, if the said Bank of Oxford, and the said Edward Mayes and R. B. Mayes, shall prosecute their writ of error to effect, and shall answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

38 BANK OF OXFORD,
By JAMES STONE, *President.*
JAMES STONE, *Surety.*
W. E. STONE, *Surety.*
EDWARD MAYES,
ROBT. B. MAYES,
By E. MAYES, *Agent.*

39 In the Supreme Court of Mississippi, March Term, A. D. 1916.

Clerk's Certificate.

STATE OF MISSISSIPPI,
Hinds County:

I, George C. Myers, Clerk of the Supreme Court of the State of Mississippi, being the Court in said State which has highest, last and final jurisdiction of all pleas and causes pending in the Courts of said State, do hereby certify that the foregoing are full true and correct copies of the papers, each and all of them, constituting the record in the said Supreme Court of the State of Mississippi, in the case of Bank of Oxford vs. J. S. Love et al. No. 18051 on the docket of said Court, all of which are now on file in my office, and which taken together, constitute the record in said Supreme Court of Mississippi.

Given under my hand and seal of said Supreme Court of Mississippi, at Jackson, in the State of Mississippi, this the 4th day of September in the year of Our Lord One Thousand Nine Hundred and Sixteen, and in the 140th year of the Independence of the United States of America.

[Seal Supreme Court, State of Mississippi.]

GEO. C. MYERS,
Clerk Supreme Court of Mississippi.

40 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Mississippi, Greeting:

In the cause in the record and proceedings, and also in the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest Court of law or equity of the said State, in which a decision could be had in said suit between the said Bank of Oxford, Appellant, and the said J. S. Lowe, E. F. Anderson and S. S. Harris, Appellees, and wherein judgment was rendered in favor of said appellees in said Court on the 19th day of June, 1916, against the said appellant; and in which was drawn in question the validity of a certain statute of the State of Mississippi, on the ground of its being repugnant to the Constitution of the United States, and the amendments thereto, and the decisions of the said Supreme Court was in favor of the validity thereof; and in which suit was drawn in question the validity of certain authority exercised by the said Bank Examiners of the State of Mississippi, under a statute of said State, on the ground that such authority, so exercised, was repugnant to the Constitution of the United States, and the amendments thereto, and the decision of said Supreme Court was in favor of the validity of such authority; and a manifest error hath hap-

pened, to the great damage of the said Bank of Oxford, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment
41 therein be given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 20th day of September next, in the said Supreme Court, to be then and there held; that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what was right, and according to the law and custom of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the said Supreme Court, the 21st day of August, in the year of our Lord, 1916.

Witness, also, my signature, and the Seal of the District Court of the United States in and for the Southern District of Mississippi, this the day and year aforesaid.

[Seal U. S. District Court, Southern District of Mississippi.]

L. B. MOSELY,
Clerk Dist. Ct. So. Dist. Mississippi.

Supreme Court of Mississippi.

I, George C. Myers, Clerk of the Supreme Court of Mississippi, by virtue of the within writ of error, and in obedience thereto, do hereby and herewith send the records and proceedings in said cause, duly certified and authenticated according to law, to the Honorable Supreme Court of the United States.

In testimony whereof, I have caused the seal of said Court to be hereunto affixed in the City of Jackson, State of Mississippi, this Sept 4th, in the year of our Lord 1916, and of the Independence of the United States, 140.

[Seal State of Mississippi, Supreme Court.]

GEO. C. MYERS,
Clerk Supreme Court of Mississippi.

[Endorsed:] Bank of Oxford, et als. Pl'ffs in Error vs. J. S. Love, et als., Def'ts in Error. Writ of Error and Return.

42 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

THE BANK OF OXFORD et als., Plaintiffs in Error,
v.
J. S. LOVE et als., Defendants in Error.

Assignment of Error.

Afterwards, to-wit, on the 21st day of August, 1916, before the Justices of the Supreme Court of the United States, at the capitol in the City of Washington, came the said, the Bank of Oxford, and the said Edward Mayes, and the said Robt. B. Mayes, plaintiffs in error, by their, and each of their attorney, Edward Mayes, and say that in the record and proceedings aforesaid there is damaging error in the particulars following, to-wit:

First. The said Supreme Court of the State of Mississippi erred in rendering the judgment of the 19th day of June, 1916, whereby the judgment of the Chancery Court of Hinds County, Mississippi, was affirmed, and the demurrer which was interposed to the original bill in this cause was sustained, and this cause dismissed. Such affirmance, and the sustaining of said demurrer, being erroneous, because the contract embodied in the charter of the said Bank of Oxford was guaranteed and protected by Article One, Section Ten of the Constitution of the United States, providing that no State shall pass any law impairing the obligation of a contract.

Second. The said Supreme Court of the State of Mississippi erred in rendering the judgment of the 19th day of June, 1916,
43 whereby the judgment of the Circuit Court of Hinds County, Mississippi, was affirmed, and whereby the statute of the State of Mississippi creating the office of Bank Examiners, was sustained, to the extent that the said statute was held to authorize the said Bank Examiners to examine and control the business and affairs of the said Bank of Oxford, in violation of said Article One, Section Ten of the Constitution of the United States and, also, in violation of the Fourteenth Amendment to the Constitution of the United States, in that it deprived the said Bank of Oxford of its property without due process of law. And the Bank of Oxford, and Edward Mayes and Robt. B. Mayes, pray that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that they may be restored to all things which they have lost by occasion of said judgment.

THE BANK OF OXFORD,
EDWARD MAYES.
ROBERT B. MAYES,
By EDWARD MAYES,
Attorney for Plaintiffs in Error.

[Endorsed:] Bank of Oxford et als., Pl'ffs in Error, vs. J. S. Love et als., Def'ts in Error. Assignment of Errors.

44 UNITED STATES OF AMERICA:

To J. S. Love, E. F. Anderson and S. S. Harris, Bank Examiners of the State of Mississippi:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Supreme Court of the State of Mississippi, wherein the Bank of Oxford and Edward Mayes and Robt. B. Mayes are plaintiffs in error, and wherein you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sidney Smith, Chief Justice of the Supreme Court of the State of Mississippi, this the 21st day of August, A. D. 1916.

SYDNEY SMITH,
Chief Justice Supreme Ct. of Mississippi.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Received the within citation on the 22d day of August, 1916, and served the same on the therein named J. S. Love, E. F. Anderson and S. S. Harris, on the 23d day of August, 1916, personally, by delivering to Robert Hall, Secretary of the Bank Examiners of Mississippi, (J. S. Love, E. F. Anderson and S. S. Harris being absent on official duties and not found in Jackson) a true and exact copy of the same; also, delivered to him, at the same time a true and exact copy of the writ of error in the said cause, issued pursuant to the fiat of the Honorable Chief Justice of the Supreme Court of Mississippi, by L. B. Mosely, Clerk of the Circuit Court of the United
45 States, in and for the Southern District of Mississippi, this the 23d day of August, 1916.

JOHN G. CASHMAN, *Marshal.*

Service accepted Aug 23, 1916.
ROBERT L. HALL, *Secretary.*

As Representative of the State of Mississippi, and as att'y of record for the Bank Examiners, I hereby waive service of this citation, and accept the same as if served; the Bank Examiners therein named being all absent on their official duties.

ROSS A. COLLINS,
Attorney General.

August 23rd, 1916.

[Endorsed:] Bank of Oxford et als., Pl'ffs in Error — J. S. Love, et als., Def'ts in Error. Citation and Return. Received & Filed Aug. 25, 1916. Geo. C. Myers, Clerk, by W. J. Burr, A. C. 2519/275.

Endorsed on cover: File No. 25,485. Mississippi Supreme Court. Term No. 655. The Bank of Oxford and Edward Mayes and Robert B. Mayes, plaintiffs in error, vs. J. S. Love, E. F. Anderson and S. S. Harris, bank examiners of the State of Mississippi. Filed September 11, 1916. File No. 25,485.